

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

GARY FOUST,

Plaintiff,

v.

BAYVIEW LOAN SERVICING, a
Delaware limited liability company, et
al.,

Defendants.

Case No. 4:16-CV-05001-LRS

**ORDER GRANTING MOTION
FOR STIPULATED PROTECTIVE
ORDER**

BEFORE THE COURT is the parties' Joint Motion for Protective Order (ECF No. 39). The Motion contains the parties' stipulation regarding information produced in discovery designated by the parties as confidential. The Motion (ECF No. 39) is herein **GRANTED** and approved as proposed. **ACCORDINGLY, IT IS HEREBY ORDERED:**

I. PURPOSES AND LIMITATIONS

1. Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties have stipulated to the following Stipulated Protective Order.

1 The parties acknowledge that this agreement is consistent with Fed. R. Civ. P. 26(c).
2 It does not confer blanket protection on all disclosures or responses to discovery, the
3 protection it affords from public disclosure and use extends only to the limited
4 information or items that are entitled to confidential treatment under the applicable
5 legal principles, and it does not presumptively entitle parties to file confidential
6 information under seal.
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9 **II. “CONFIDENTIAL” MATERIAL**

10 2. “Confidential” material shall include, but is not limited to, the following
11 documents and tangible things produced or otherwise exchanged:
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- 13 • Defendants’ proprietary business information, including but not
14 limited to any written agreements between any of the defendants.
15

16 **III. SCOPE**

17 3. The protections conferred by this agreement cover not only confidential
18 material (as defined above), but also (1) any information copied or extracted from
19 confidential material; (2) all copies, excerpts, summaries, or compilations of
20 confidential material; and (3) any testimony, conversations, or presentations by
21 parties or their counsel that might reveal confidential material. However, the
22 protections conferred by this agreement do not cover information that is in the public
23 domain or becomes part of the public domain through trial or otherwise.
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1 **IV. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL**

2 4.1 Basic Principles. A receiving party may use confidential material that
3 is disclosed or produced by another party or by a non-party in connection with this
4 case only for prosecuting, defending, or attempting to settle this litigation.
5 Confidential material may be disclosed only to the categories of persons and under
6 the conditions described in this agreement. Confidential material must be stored and
7 maintained by a receiving party at a location and in a secure manner that ensures that
8 access is limited to the persons authorized under this agreement.
9

10 4.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
11 otherwise ordered by the court or permitted in writing by the designating party, a
12 receiving party may disclose any confidential material only to:
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- 14 (a) the receiving party's counsel of record in this action, as well as employees
15 of counsel to whom it is reasonably necessary to disclose the information
16 for this litigation;
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18 (b) the officers, directors, and employees (including in house counsel) of the
19 receiving party to whom disclosure is reasonably necessary for this
20 litigation;
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22 (c) experts and consultants to whom disclosure is reasonably necessary for this
23 litigation and who have signed the "Acknowledgment and Agreement to Be
24 Bound" (Exhibit A);
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1 (d) the court, court personnel, and court reporters and their staff;

2 (e) copy or imaging services retained by counsel to assist in the duplication of
3 confidential material, provided that counsel for the party retaining the copy
4 or imaging service instructs the service not to disclose any confidential
5 material to third parties and to immediately return all originals and copies of
6 any confidential material;
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9 (f) during their depositions, witnesses in the action to whom disclosure is
10 reasonably necessary and who have signed the “Acknowledgment and
11 Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the
12 designating party or ordered by the court. Pages of transcribed deposition
13 testimony or exhibits to depositions that reveal confidential material must
14 be separately bound by the court reporter and may not be disclosed to
15 anyone except as permitted under this agreement;
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19 (g) the author or recipient of a document containing the information or a
20 custodian or other person who otherwise possessed or knew the information.
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22 4.3 Filing Confidential Material. Before filing confidential material or
23 discussing or referencing such material in court filings, the filing party shall confer
24 with the designating party to determine whether the designating party will remove
25 the confidential designation, whether the document can be redacted, or whether a
26 motion to seal or stipulation and proposed order is warranted. If the proposed filing
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1 issue is not resolved informally, a motion to seal may be brought pursuant to
2 applicable standards and Local Rule 7.1.

3 4 **V. DESIGNATING PROTECTED MATERIAL**

5 **5.1 Exercise of Restraint and Care in Designating Material for Protection.**

6 Each party or non-party that designates information or items for protection under
7 this agreement must take care to limit any such designation to specific material that
8 qualifies under the appropriate standards. The designating party must designate for
9 protection only those parts of material, documents, items, or oral or written
10 communications that qualify, so that other portions of the material, documents,
11 items, or communications for which protection is not warranted are not swept
12 unjustifiably within the ambit of this agreement.

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16 Mass, indiscriminate, or routinized designations are prohibited. Designations
17 that are shown to be clearly unjustified or that have been made for an improper
18 purpose (*e.g.*, to unnecessarily encumber or delay the case development process or
19 to impose unnecessary expenses and burdens on other parties) expose the
20 designating party to sanctions.

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23 If it comes to a designating party's attention that information or items that it
24 designated for protection do not qualify for protection, the designating party must
25 promptly notify all other parties that it is withdrawing the mistaken designation.
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1 5.2 Manner and Timing of Designations. Except as otherwise provided in
2 this agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise
3 stipulated or ordered, disclosure or discovery material that qualifies for protection
4 under this agreement must be clearly so designated before or when the material is
5 disclosed or produced.
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7 a) Information in documentary form: (*e.g.*, paper or electronic
8 documents and deposition exhibits, but excluding transcripts of depositions or
9 other pretrial or trial proceedings), the designating party must affix the word
10 “CONFIDENTIAL” to each page that contains confidential material. If only
11 a portion or portions of the material on a page qualifies for protection, the
12 producing party also must clearly identify the protected portion(s) (*e.g.*, by
13 making appropriate markings in the margins).
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17 b) Testimony given in deposition or in other pretrial or trial
18 proceedings: The parties must identify on the record, during the deposition,
19 hearing, or other proceeding, all protected testimony, without prejudice to their
20 right to so designate other testimony after reviewing the transcript. Any party
21 or non-party may, within fifteen days after receiving a deposition transcript,
22 designate portions of the transcript, or exhibits thereto, as confidential.
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26 c) Other tangible items: The producing party must affix in a
27 prominent place on the exterior of the container or containers in which the
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1 information or item is stored the word "CONFIDENTIAL." If only a portion
2 or portions of the information or item warrant protection, the producing party,
3 to the extent practicable, shall identify the protected portion(s).
4

5 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
6 failure to designate qualified information or items does not, standing alone, waive
7 the designating party's right to secure protection under this agreement for such
8 material. Upon timely correction of a designation, the receiving party must make
9 reasonable efforts to ensure that the material is treated in accordance with the
10 provisions of this agreement.
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12 **VI. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

13 6.1 Timing of Challenges. Any party or non-party may challenge a
14 designation of confidentiality at any time. Unless a prompt challenge to a
15 designating party's confidentiality designation is necessary to avoid foreseeable,
16 substantial unfairness, unnecessary economic burdens, or a significant disruption
17 or delay of the litigation, a party does not waive its right to challenge a
18 confidentiality designation by electing not to mount a challenge promptly after the
19 original designation is disclosed.
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23 6.2 Meet and Confer. The parties must make every attempt to resolve any
24 dispute regarding confidential designations without court involvement. Any motion
25 regarding confidential designations or for a protective order must include a
26 certification, in the motion or in a declaration or affidavit, that the movant has
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1 engaged in a good faith meet and confer conference with other affected parties in
2 an effort to resolve the dispute without court action. The certification must list the
3 date, manner, and participants to the conference. A good faith effort to confer
4 requires a face-to-face meeting or a telephone conference.
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6 6.3 Judicial Intervention. If the parties cannot resolve a challenge without
7 court intervention, the designating party may file and serve a motion to retain
8 confidentiality under Local Civil Rule 7.1 (and in compliance with other Local Rules
9 where applicable). The burden of persuasion in any such motion shall be on the
10 designating party. Frivolous challenges, and those made for an improper purpose
11 (*e.g.*, to harass or impose unnecessary expenses and burdens on other parties) may
12 expose the challenging party to sanctions. All parties shall continue to maintain the
13 material in question as confidential until the court rules on the challenge.
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17 **VII. PROTECTED MATERIAL SUBPOENAED OR** 18 **ORDERED PRODUCED IN OTHER LITIGATION**

19 7. If a party is served with a subpoena or a court order issued in other litigation
20 that compels disclosure of any information or items designated in this action as
21 “CONFIDENTIAL,” that party must:
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- 23 a) promptly notify the designating party in writing and include a
24 copy of the subpoena or court order;
25 b) promptly notify in writing the party who caused the subpoena or
26 order to issue in the other litigation that some or all of the material covered by
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1 the subpoena or order is subject to this agreement. Such notification shall
2 include a copy of this agreement; and

3 c) cooperate with respect to all reasonable procedures sought to be
4 pursued by the designating party whose confidential material may be affected.
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6 **VIII. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

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8 8. If a receiving party learns that, by inadvertence or otherwise, it has
9 disclosed confidential material to any person or in any circumstance not authorized
10 under this agreement, the receiving party must immediately (a) notify in writing the
11 designating party of the unauthorized disclosures, (b) use its best efforts to retrieve
12 all unauthorized copies of the protected material, (c) inform the person or persons to
13 whom unauthorized disclosures were made of all the terms of this agreement, and
14 (d) request that such person or persons execute the “Acknowledgment and
15 Agreement to Be Bound” that is attached hereto as Exhibit A.
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18 **IX. INADVERTENT PRODUCTION OF PRIVILEGED OR** 19 **OTHERWISE PROTECTED MATERIAL**

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21 9. When a producing party gives notice to receiving parties that certain
22 inadvertently produced material is subject to a claim of privilege or other protection,
23 the obligations of the receiving parties are those set forth in Federal Rule of Civil
24 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
25 may be established in an e-discovery order or agreement that provides for production
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1 without prior privilege review. Parties shall confer on an appropriate non-waiver
2 order.

3 **X. NON TERMINATION AND RETURN OF DOCUMENTS**

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5 10. Within 60 days after the termination of this action, including all
6 appeals, each receiving party shall destroy all confidential material to the producing
7 party, including all copies, extracts and summaries thereof. Alternatively, the parties
8 may agree upon appropriate methods of destruction or return of any confidential
9 material.
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12 Notwithstanding this provision, counsel are entitled to retain one archival
13 copy of all documents filed with the court, trial, deposition, and hearing transcripts,
14 correspondence, deposition and trial exhibits, expert reports, attorney work product,
15 and consultant and expert work product, even if such materials contain confidential
16 material.
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19 The confidentiality obligations imposed by this agreement shall remain in
20 effect until a designating party agrees otherwise in writing or a court orders
21 otherwise.
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23 IT IS SO ORDERED.

24 DATED this 26th day of January, 2017.

25
26 *s/Lonny R. Suko*

27 _____
28 LONNY R. SUKO
SENIOR U.S. DISTRICT COURT JUDGE

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____, of _____ (address),
declare under penalty of perjury that I have read in its entirety and understand the
Stipulated Protective Order that was issued by the Federal District Court of the
Eastern District of Washington on _____ (date) in the case of *Foust v.*
Bayview Loan Servicing, LLC, et al., Case No. 4:16-cv-05001-LRS. I agree to
comply with and to be bound by all the terms of this Stipulated Protective Order
and I understand and acknowledge that failure to so comply could expose me to
sanctions and punishment in the nature of contempt. I solemnly promise that I will
not disclose in any manner any information or item that is subject to this Stipulated
Protective Order to any person or entity except in strict compliance with the
provisions of this Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____